SUPREME COURT OF THE UNITED STATES.

No. 126.

THE WEST RIVER BRIDGE COMPANY, PLAINTIFF IN ERROR,

vs.

THE TOWNS OF BRATTLEBOROUGH AND DUMMERSTON, IN THE COUNTY OF WINDHAM, AND JOSEPH DIX, ASA BOYDEN, AND PHINEAS UNDERWOOD.

IN ERROR TO THE SUPREME COURT OF JUDICATURE OF THE STATE OF VERMONT, AND THE CHANCELLOR OF THE FIRST JUDICIAL CIRCUIT OF THE SAID STATE OF VERMONT.

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J. & G. S. GIDEON, printers.

STATE OF VERMONT, *Windham county*,
Court of chancery, clerk's office.

[SEAL.] NEW FANE, *June 4th*, A. D. 1843.

I, Marshall Miller, clerk of said court, certify that the following are true copies of the files, records, and proceedings of said court in said cause now remaining in this office.

In testimony whereof I hereunto set my hand, and affix the seal of said court, the day and year above written.

Attest, MARSHALL MILLER, *Clerk*.

To the honorable the chancellor of the first judicial district of the State of Vermont:

Humbly complaining, sheweth unto your honor your orators, the West River Bridge Company, that by an act of the General Assembly of the said State of Vermont, passed on the sixteenth day of October, A. D. 1795, John W. Blake and Calvin Knowlton, and their associates, were formed into, constituted, and made a body politic and corporate by the aforesaid name of the West River Bridge Company, and it was therein further enacted that the said corporators and their successors, and such other persons as should be thereafter admitted members of said company, should be and continue a body politic and corporate by the same name one hundred years; and that the same company should have the exclusive privilege of erecting and continuing a bridge over West river within four miles of the place where said stream unites with the Connecticut river. And it was therein further enacted, that it should and might be lawful for said company to demand and receive toll, at the following rates, for crossing said bridge, to wit: For each passenger two cents; for each horse three cents; for each ox or cow, or other horned creature, not exceeding ten in number, three cents, and if over that number each two cents; for each chaise or sulky, ten cents; for each loaded cart or waggon, sixteen cents; for each cart or waggon not loaded, eight cents; for each charriot, coach, or phæton, or other four-wheeled pleasure carriage, fifty cents; for each sleigh, drawn by two or more horses, twelve cents; for each sleigh or cart, drawn by one horse, six cents; and for each sheep or swine, half a cent. And it was in and by said act further enacted, that said company were made capable of sueing and being sued, of prosecuting and defending suits in their corporate capacity; that they might have a common seal, and make by-laws for their company concerns; and at any meeting named for that purpose might choose a president and four trustees, who should continue in office for two years from the time of their election, and until others should be chosen in their place; a majority of whom, including the president, should form a quorum to transact business.

And your orators further shew to your honors that, at the time of the passing of said act, there was standing an old and ruinous bridge across said West river, situate about half a mile northwest from the place in Brattleboro' where the bridge now crosses said stream, and that it was in and by said act, in relation to said old bridge, further enacted, that the bridge then standing over said stream should be at the disposal of said company whenever the new bridge should be completed; and in case it should be necessary to build at the same place, said company were by said act authorized to remove the old bridge whenever they should commence a building; and that the said company should keep the said bridge, to be by them erected and continued in manner aforesaid, in good repair at all times forever thereafter, and in case of neglect should be liable to the same penalties to which towns by law are subject for not keeping roads and bridges in repair; and that in case said company should neglect, for the space of six months after complaint made, they should forfeit all the rights and privileges granted by said act. And it was further enacted in and by said act, provided that, if the said company should not, within two years after such time as a committee appointed by the legislature for that purpose, (or, in case no such committee should be appointed) the selectmen of the town of Brattleboro' should lay out and survey a road to cross said stream, build a bridge at the place where said road should be laid, and render the same passable, or repair and maintain the old bridge free of toll until within the term of six months before the new bridge should be completed, they should receive no benefit by said act of the General Assembly. And your orators further shew to your honor that said General Assembly, at the same session thereof, and on the 27th day of the same October, passed another act, appointing Samuel Cutler, Eliakim Spooner and David Saunderson, or either two of them, a committee to lay out a public highway from the south line of this State to the north line of the county of Windham, either through the town of Hinsdale or Guilford, as might appear to said committee most beneficial; which said road said committee were, in and by said act, directed to lay as near the banks of Connecticut river as might be eligible and convenient, and further directing said committee to commence the survey of such road on or before the first day of April then next, and complete the same as soon as may be; and further enacting, that any road laid out by said committee, in the manner pointed out in said act, and recorded in the town clerk's office in the town where such road lies, should not be altered by the selectmen of said town; and further directing said committee to cause their survey of said road to be recorded in the town clerk's office of the town through which said road should run.

And your orators further shew to your honor that the said committee, in pursuance of this said appointment, and in compliance with the provisions of said last mentioned act, on or about the said first day of April, A. D. 1796, proceeded to lay out said public

highway, and did duly and in accordance with the provisions and directions of said act, lay out and survey said road and public highway, crossing said West river near its mouth or junction with the Connecticut river, and at the place where the bridge now owned by your orators stands; which said highway thus laid out has from thence hitherto remained and continued the principal avenue and stage road from the south end to the north end of said county of Windham. And your orators further shew to your honor, that the said John W. Blake and Calvin Knowlton, and their associates, having duly organized according to the provisions of their said act of incorporation, and putting full faith and confidence in the promise of the State therein made, that if they would erect said bridge at the place where said committee laid said road across said stream, within two years after the same should be so laid, they should, during said hundred years, have and enjoy said tolls and exclusive privileges mentioned in said act of incorporation, did, in the summer of the year of our Lord 1796, and in the spring of the year 1797, and before two years had elapsed from the laying or surveying said road by said committee, at great expenditure and risk of their capital, and at great pains and labor, build said bridge at the place where said road was laid by said committee across said stream, and did render the same passable and convenient for the public; and from thence hitherto have, relying on said promise, at great cost and expense, kept said bridge in good repair, and have never neglected for six months, or any shorter time, to repair the same, or to do any of the other duties by the said act of incorporation imposed upon them. And your orators further shew to your honor that, on the 6th day of November, A. D. 1801, all the proprietors of said West River Bridge Company having made application for an alteration in the rates of toll allowed by said incorporating act to said company, it was enacted by the General Assembly of the State of Vermont, that in view of the rates of toll established by said act of incorporation, it should and might thenceforth be lawful for West River Bridge Company to demand and receive the following rates of toll for crossing said bridge, to wit: For each foot passenger two cents; for each horse and passenger five cents; for each ox or cow, or other horned creature, or horse, not exceeding ten in number, three cents; if over that number two cents each; for each chaise or sulky, drawn by one or more horses, ten cents; for each loaded cart or waggon, drawn by two or more horses, sixteen cents; for each cart or waggon not loaded, which may be drawn by two or more horses, or cattle, eight cents; for each charriot, coach, phæton, or other pleasure carriage, drawn by two horses, thirty-seven and an half cents; for each sleigh, drawn by two or more horses, twelve and an half cents; for each sleigh or cart, drawn by one horse, six and an half cents; and for each sheep or swine, half a cent.

And your orators further shew to your honor that, from the said

building of said bridge to the said act of 1801, they were in the possession and enjoyment of the privileges and tolls granted by said incorporating act, and since said act of the year 1801, have been in the possession and enjoyment of the privileges and tolls as thereby altered and qualified until the present time; and that, from the faith and confidence placed as well in the State of Vermont as in the authorities thereof, the shares in said companies' property became and were of great value, and were readily purchased because of the confidence *their* reposed that the State of Vermont, having entered into a contract with said company, and thereby induced said company to make said expenditures of capital, and perform the things therein provided for said company to do, would not, in violation thereof, directly or indirectly, deprive the said company and its shareholders of the tolls and privileges therein stipulated. And your orators well hoped that they would have been permitted, during the remainder of the term to which said act of incorporation is limited, to continue to do all the duties by said act of incorporation made incumbent on them, and to enjoy all the rights, privileges and just income and profit to which they are entitled under the same; and that as well the State of Vermont as the citizens thereof would respect, abide by, and keep the contract thus made between the said State and said West River Bridge Company, and would abstain as well from all interruptions of the collection by said company of their lawful and proper tolls, as from all other acts endangering or disputing said companies' right or title thereto, or tending to involve the said company in disputes as to their rights, or tending to injure the said company in the sale of shares by rendering their *the* right to said tolls to be doubted; and that all persons would have abstained, as in equity they ought, from the laying or making, or threatening to lay or make, any other road, bridge or highway, across said stream within four miles of its junction with Connecticut river during the remainder of said term.

But now so it is, may it please your honor, that the said town of Brattleboro' and the town of Dummerston in said county, and Joseph Dix, Asa Boyden, and Phineas Underwood, of Putney and Dummerston, in said Windham county, combining and confederating with sundry other persons, *copetioners* with them the said Dix, Boyden and Underwood, to the county court of said county, at the last September term thereof, too numerous to leave it practicable to prosecute this suit if all should be made parties; and combining and confederating with divers other persons to your orators unknown, but whose names when discovered your *your* orator prays may be inserted herein, with apt and proper words to charge them, and contriving how to wrong and injure your orators in the premises, and how to deprive your orators of the benefits equitably belonging to them under their said contract with the State of Vermont, the said Dix, Boyden and Underwood, and their said copetitioners, did present to the said county court, at said September term, in the year of grace 1842, their petition, setting forth, among

other things, that the stage road leading from H'y Smith's stage house in said Brattleboro', (a point about three-fourths of a mile south of your orator's said bridge,) through the northern part of said town of Brattleboro', and through the town of Dummerston to the south line of Putney, had been subject of great complaint, and asserting your orators' said bridge to be a sore grievance, and praying said county court, by a committee, to cause said route to be surveyed, and such alterations and improvements to be made in the old road, or a new one to be laid, as the public good might require; and praying, further, that the real estate, easement and franchise of the West River Bridge Company might be taken for the purpose of making a free road and bridge across said river; and thereupon such proceedings were had by said defendants before said court, that Thomas F. Hammond, Julius Converse, and I. N. Cushman were appointed a committee on said petition.

And the said defendants, on or about the 26th day of October then next, but now passed, caused said committee to examine said route, and on or about the 26th of January, A. D. 1843, to report to said county court that they, the said committee, had proceeded to examine the route for a new road, as set forth in said petition, between the stage house of Henry Smith, through the easterly parts of the towns of Brattleboro' and Dummerston, to the south line of the town of Putney, and were unanimously of opinion that a new road ought to be laid out over a considerable portion of the distance between the termini mentioned in said petition. That they therefore proceeded to lay out said road, and caused the same to be surveyed, and to notify the land-owners that they might be heard in the amount of damages to individuals, and to discontinue certain old roads; which survey, assessment of damages to individuals, and discontinuance of old roads was, with said report, returned, marked "A;" and said committee further made their report, that they "also examined the toll-bridge across West river, in Brattleboro', and had taken into consideration the propriety of laying a free road across said bridge at the expense of said town of Brattleboro', as contemplated by said petition," and "that in this the said commissioners were unanimously of opinion that the public good required that the real estate, easement and franchise of said West River Bridge corporation should be taken, and compensation made therefor, that said toll-bridge might thereafter become a free bridge; the said commissioners have therefore assessed to the said West River Bridge corporation the sum of four thousand dollars, to be paid to the said West River Bridge corporation out of the treasury of said town of Brattleboro', in full compensation for all real estate, easement or franchise belonging to said corporation; which real estate, easement or franchise is situated in said town of Brattleboro', near the mouth of West river, and is supposed to be more particularly described in a deed from Josiah Arms to the West River Bridge Company, dated on the first day of April, in the year seventeen hundred

and ninety-nine, and recorded in Brattleboro' records of deeds, liber D, page 203, containing two acres of land, be the same more or less, with a covered bridge, gate, toll-house, barn, and other buildings thereon."

And in the said paper, marked "A," and referred to as above, the said committee proved as follows:

"Survey of a road in Brattleboro and Dummerston, in the county of Windham, and State of Vermont, in alteration of the public highway or stage road, leading from the stage house of Henry Smith in Brattleboro', through the northerly part of said town, and through the town of Dummerston, to the south line of Putney, in said county, as laid out by Thomas F. Hammond, Julius Converse, and Isaac N. Cushman, commissioners duly appointed to that service by the honorable the county court for the said county of Windham, at their September term, in the year of our Lord one thousand eight hundred and forty-two, on the petition of Joseph Dix and others: Beginning at the said stage house of Henry Smith in the village of Brattleboro', thence northerly, following the said public highway or stage road crossing West river, on the bridge owned by the West River Bridge corporation, and continuing on said stage road, without any alteration of the same, to the north line of land of Eli Sargeant in Brattleboro', where the road leading to Norcross Ferry takes its departure from said stage road; thence north thirty-four degrees east, sixteen rods in the centre of said stage road; thence north three degrees east, seventy-five rods on land of Church Miller, fifty rods of which is in Brattleboro', and twenty-five rods in Dummerston;" after which said survey proceeds to mention certain courses and distances through the town of Dummerston, and certain assessments of damages to individuals, without however any further mention of your orators, or their said property or franchise. And which report and survey thus procured by the defendants is signed by the said Hammond, Converse and Cushman. And the said defendants having thus procured said report and survey to be made, have entered the same, or caused the same to be entered, in the files in the office of the clerk of said county court, and threaten and give out in speeches that they will, by themselves and by counsel employed for that purpose, pursuade and induce said court to take from your orators their said easement and franchise, whether your orators consent thereto or not, and will make a free road for all persons to travel across said bridge without paying to your orators any of the tolls stipulated and secured to your orators by the said two acts of the General Assembly, thereby greatly injuring the sale and general appreciation, and make price and sale of your orators' said property; sometimes pretending that your orators have consented to the annulling, invalidating and cancelling the said contract so made with the State of Vermont, whereas your orators charge the contrary to be true, and that said defendants well know that your orators have always claimed and insisted

on the rights, privileges, tolls, and income secured to them by said two acts of the General Assembly. Then again the defendants sometimes pretend that the said General Assembly have, since the said incorporating act and act altering the tolls were passed, enacted some law authorizing the said courts, whenever there shall be occasion for any new highway in any town or towns in this State, to take any real estate, easement, or franchise of any corporation, whether in accordance with or in violation of a pre-existing contract between such corporation and the State, and whether such corporation consent to such taking or not; whereas your orators charge and insist that there is not and cannot be any such law, and that the same if enacted by the legislature of Vermont would impair the obligation of said contract of your orators with the State of Vermont, and would, as against your orators, who do not consent to said taking, be unconstitutional and void; and besides, your orators charge and insist in this behalf, that it is true, and that the said report proves, that there is no occasion for any new highway any where in the vicinity of your orators' bridge; but that, on the contrary, said report and its survey, from said Henry Smith's tavern or stage house, a point three-fourths of a mile south of said bridge, to the north line of Eli Sargeant's land, a point more than two miles north of said bridge, continues on said ancient highway, laid out as aforesaid by Samuel Cutler, Eliakim Spooner, and David Saunderson, in the year of grace 1796, "without any alteration of the same."

All which actings, doings and pretenses are contrary to equity and good conscience, and true, to the manifest wrong and injury of your orators in the premises. In tender consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity, where matters of this and the like nature are properly cognizable and relievable, to the end, therefore, that the said defendants and their confederates when discovered, may, upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make, to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that the said confederates may, in manner aforesaid, answer and set forth.

Interrogatory 1st. Whether the General Assembly did not, on said 16th day of October, A. D. 1795, pass the said act of incorporation hereinbefore mentioned, and whether the same did not contain the claims and provisions hereinbefore stated?

2d. Whether, on the 27th day of October, A. D. 1795, the said General Assembly did not pass another act, as hereinbefore set forth, appointing Samuel Cutler, Eliakim Spooner, and David Saunderson a committee, to lay out a public highway, and confer on them the *persons* hereinbefore stated?

3d. Whether the said Cutler, Spooner and Saunderson did not,

on the first day of April, A. D. 1796, or at some other time, and when, lay out and survey said public highway?

4th. And whether the same did not cross the West river near its junction with the Connecticut, and at the place where your orators' toll-bridge now stands?

5th. Whether said highway so surveyed and laid out by said Cutler, Spooner and Saunderson, has not ever since then remained and continued the principal avenue and stage road from the south to the north end of said county of Windham?

6th. Whether the said Blake and Knowlton, and their associates, did not organize their corporation, and in the year of our Lord 1796 and 1797, and within two years after the laying said highway by said Cutler, Spooner and Saunderson, build said bridge at the place designated by the survey of said committee, and render the same passable and convenient for the public?

7th. Whether the said West River Bridge Company have not since said erection of said bridge continued to maintain and keep the same in repair, and whether they have not since then done the duties incumbent on them in relation to said bridge?

8th. Whether the tolls granted and secured to said company were not altered by the act of the General Assembly of the 6th of November, A. D. 1801, as herein before stated?

9th. Whether the said company have not, from the building of their said bridge to said act of 1801, and from said act of 1801 to the present time, been in the possession and enjoyment of the privileges and tolls granted by said incorporating act and the act in alteration thereof?

10th. Whether the said company's property had not become valuable, and whether the shares of its stock had not become saleable?

11th. Whether the defendants Dix, Boyden and Underwood, did not present, or cause to be presented, their petition to the county court at the September term thereof in 1842, and whether said petition is not as hereinbefore described and set forth?

12th. Whether the said defendants are not, by means of said petition and the proceedings thereunder, intending and attempting to prevent, to deprive said company of the rights, privileges and tolls secured to them by said acts of the General Assembly, and to prevent the said company from receiving or collecting tolls at said bridge, whether said company be willing or not to relinquish the same?

May it please your honor to grant to your orators not only your honor's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said towns of Brattleboro' and Dummerston, and said Joseph Dix, Asa Boyden, and Phineas Underwood, to restrain them and each of them from proceeding at law in the matter of said petition to the county court, so far as the same relates to the West River Bridge Company, or the real estate, easement or franchise belonging to the same; but also such other and

further relief in the premises as the nature and circumstances of this case may require. And may it please your honor to grant unto your orator your writ of subpœna, to be directed to said defendants, commanding them by a certain day, and under a certain pain therein to be limited, personally to be and appear before this honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction and decree therein as to your honor shall seem meet.

And your orators shall ever pray, &c.

West River Bridge Company, by

EPAPHRO. SEYMORE,
Agent and attorney.

J. D. BRADLEY, *Solicitor.*

To the towns of Brattleboro' and Dummerston, and to Joseph Dix, Asa Boyden and Phineas Underwood, greeting:

By the authority of the State of Vermont you are hereby commanded to make your personal appearance before the county court next to be holden at New Fane, within and for the county of Windham, on the last Tuesday of May, in the year of our Lord one thousand eight hundred and forty-three, at a court of chancery, then and there to make answer to the foregoing bill of the said West River Bridge Company, and further to stand to and abide such order, direction and decree therein, as [to] the said court shall seem meet; and of this you may not fail, under the penalty of five hundred dollars.

To any sheriff or constable in the State, to serve and return.

Given under my hand at New Fane, in the county of Windham, this 29th day of April, in the year of our Lord one thousand eight hundred and forty-three.

MARSHALL MILLER, *Clerk.*

WINDHAM COUNTY, *ss.*

BRATTLEBORO', *May 11th*, 1843.

Then by virtue of the within bill and precept to me directed, I made service of the same on the town of Brattleboro' by leaving a true and attested copy of this bill and precept with the town clerk of said Brattleboro', and my return thereon endorsed. Also left a true and attested copy of this bill and precept with the town clerk of the town of Dummerston, and my return thereon endorsed. Also gave to each of the within named defendants Joseph Dix, Asa Boyden and Phineas Underwood, true and attested copies of this bill and precept, and my return *hereon* thereon endorsed.

Attest, CHAS. CHAPIN, *D. Sheriff.*

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STATE OF VERMONT, *Windham, ss:*

Causes in the court of chancery heard and tried, in the first judicial district, at New Fane, in the county of Windham and State of Vermont, on the last Tuesday, being the thirtieth day, of May, in the year of our Lord one thousand eight hundred and forty-three—

Present, honorable Isaac F. Redfield, chancellor.

THE WEST RIVER BRIDGE COMPANY, complainants,
vs.
THE TOWNS OF BRATTLEBORO' and DUMMERSTON, Joseph Dix, Asa Boyden and Phineas Underwood, defendants.

The complainants appear by J. D. Bradley, their solicitor, and present their bill of complaint to the court, which is on file. The defendants appear by Keyes and Kellogg, their solicitors, and file their demurrer, and move the court to enjoin the complainants, which demurrer is as follows:

THE WEST RIVER BRIDGE CORPORATION, complainants,
vs.
THE TOWNS OF DUMMERSTON AND BRATTLEBORO', Asa Boyden, Joseph Dix and Phineas Underwood, defendants.

In chancery.

The demurrer of said Asa Boyden, Joseph Dix and Phineas Underwood, and said town of Dummerston, to the bill of complaint of said complainants:

The said defendants by protestations, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alledged, do demur in law to the said bill, and for causes of demurrer shew—

1. That the complainants have not by said bill made such a case as entitles them to any discovery in a court of equity from these defendants respectively, or any of them, or to any relief against them, as to the said matters contained in the said bill.

2. That the said bill is otherwise informal, insufficient and defective. Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, these defendants do demur to said bill, and to all the matters and things therein contained, and pray the judgment of this honorable court, whether they shall be compelled to make any further or other answer to said bill, and humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

By KEYES & KELLOGG, *their Solicitors.*

It is ordered by the court that this cause be continued until the next term.

STATE OF VERMONT, *Windham, ss:*

Causes in chancery heard and tried, in the first judicial circuit, at New Fane, in the county of Windham and State of Vermont, on the third Tuesday, being the twenty-first day, of November, in the year of our Lord one thousand eight hundred and forty-three. Present, honorable Charles K. Williams, esquire, chancellor.

STATE OF VERMONT, *Windham, ss:*

THE WEST RIVER BRIDGE CO., Complainants,
vs.
THE TOWN OF BRATTLEBORO' and DUMMERSTON, and Joseph Dix, Asa Boyden and Phineas Underwood, Defendants.

The chancellor of the first judicial circuit, to all to whom these shall come.

Whereas the West River Bridge Company have preferred their petition in chancery to this court charging, among other things, that on the 16th day of October, 1785, John W. Blake and Calvin Knowlton, and their associates, were by the General Assembly of the State of Vermont, made and constituted a body politic and corporate by the aforesaid name of the West River Bridge Company for the term of one hundred years, with the exclusive privilege of erecting and continuing a toll-bridge over West river within four miles of the place where said river enters the Connecticut; further charging, that the said company duly organized according to the provisions of their charter, and erected their toll-bridge across the said West river, and within the chartered limits thereof, and ever since hath kept the same in suitable repair for the public travel thereon, and further setting forth that Asa Boyden, Joseph Dix and Phinehas Underwood, with divers other persons, did present their petition to the county court for said county of Windham, at the September term, 1842, asserting that the said toll-bridge was a sore grievance, and praying said court that the real estate, easement, and franchise of said company might be taken for the purpose of making said bridge free; and further stating, that Thomas F. Hammond, Julius Converse and Isaac N. Cushman, a committee of said court appointed pursuant to the prayer of said petition, had reported that they were unanimously of opinion that the public good requires that the real estate, easement and franchise of said company should be taken, and compensation therefor made, that said toll-bridge may be thereafter free; and that said committee having taken up the easement and franchise of said company, and allowed them as compensation in damages therefor four thousand dollars, made their report to said county court at the May term thereof, and that the said Dix, Boyden and Underwood, with others, are confederating with the towns of Brattleboro' and Dummerston to procure the acceptance of said report to the great injury of said company, con-

trary to equity and good conscience, praying that a writ of injunction be awarded to restrain the said towns of Brattleboro' and Dummerston, and the said Joseph Dix, Asa Boyden and Phineas Underwood, from further proceeding in their said petition, and for further relief. The usual process of subpœna having been granted, and the parties duly notified, and the orators' said bill having been duly entered in this court, the defendants appear and demur to said bill, which is now heard on bill and demurrer; and now, after the reading of the said bill and demurrer, and the arguments of counsel, it is considered by the court here that the orators have not, in their said bill, made such a case as entitled them to the aid of this court as prayed for. It is therefore ordered by the court here, that said bill be dismissed, and that the defendants recover their costs, taxed by the court at nineteen dollars and seventy-five cents.

Done at New Fane, in said county of Windham, this thirtieth day of November, A. D. 1843.

CH. K. WILLIAMS, *Chancellor.*

The above decree conforms to the bill, pleading, and decrees of the court therein.

ASA KEYES, *Sol'r for Defts.*

West River Bridge Company, vs. Brattleboro', Dummerston, and others. } In chancery.

To the honorable the court of chancery of the first judicial district of the State of Vermont.

The petition of the West River Bridge Company respectfully sheweth, that the said defendants having demurred to the orators' bill of complaint, the said court has decreed that said causes of demurrer are sufficient, and ordered that said bill be dismissed.

Now the said complainants pray that an appeal may be granted them to the Supreme Court, next to be holden at New Fane, within and for the county of Windham, on the third Tuesday next after the fourth Tuesday of January next from the decree aforesaid; Nov. term, A. D. 1843.

By J. D. BRADLEY,
Solicitor for Orators.

Which appeal is granted them.

State of Vermont, *Windham, ss:*

Causes in chancery, heard and tried in the first judicial circuit at New Fane, in the county of Windham and State of Vermont, on the last Tuesday, being the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and forty-four.

Present, honorable Charles K. Williams, esquire, chancellor.

THE WEST RIVER BRIDGE COMPANY, complainants,
vs.
THE TOWNS OF BRATTLEBORO' AND DUMMERSTON, Joseph Dix, Asa Boyden and Phinehas Underwood, defendants.

It appears to the court here that this cause was heard and tried by the court of chancery held at New Fane, within and for the county of Windham, on the third Tuesday of November, A. D. 1843, at which term the said court of chancery ordered and decreed, that the orators' bill of complaint be and the same was dismissed, with costs, to the defendants; and that the orators prayed for, and were by said court allowed, an appeal from said decree of said court to the supreme court of judicature then next to be holden at New Fane, within and for the county of Windham, on the third Tuesday then next after the fourth Tuesday of January, A. D. 1844, and that this cause was, by said supreme court, heard and tried at said term, and that said supreme court ordered and adjudged that the said decree of the said court of chancery should be, and the same was, by said supreme court affirmed, and that said bill of complaint was by said supreme court dismissed, and that the defendants recover of the orators their costs; and it was ordered by said supreme court that the proceedings in this cause, and the judgment of said court, and all things concerning the same, be remitted to this court, that the same might be carried into effect, and the same has been done. And now the orators appear, by J. D. Bradley and William C. Bradley, their solicitors.

The defendants appear by Dan'l Kellogg and John Kimball, their solicitors.

Whereupon, all and singular the premises being seen, and by the court fully understood, it is ordered and decreed by the court here, and the court do order and decree, that the said orators' said bill of complaint be, and the same is dismissed, and that the defendants recover of the orators their just costs in this behalf laid out and expended, taxed by the court at

STATE OF VERMONT, *county of Windham:*

I, Charles K. Williams, chancellor of the first judicial circuit of the State of Vermont, do certify that Marshall Miller, esq., whose signature is affixed to the papers hereunto annexed, is the clerk of said court of chancery for the county of Windham in said circuit, and hath the keeping of the files, records, and proceedings of said court of chancery, and of all former courts of chancery, holden within and for said county, and is by law the proper person to make out and certify copies thereof; and that full faith and credit are, and ought to be, given to his acts and attestations done as aforesaid, and that his attestation to the papers hereto annexed is in due form.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said court to be hereunto affixed, this fourth [SEAL.] day of June, in the year of our Lord one thousand eight hundred and forty-four.

CH. K. WILLIAMS, *Chancellor.*

STATE OF VERMONT, *Windham county,*
Supreme court of Judicature, clerk's office,
[SEAL.] NEW FANE, *June 4th, A. D.* 1844.

I, Marshall Miller, clerk of said court, certify that the following are true copies of the files, and records, and proceedings of said court, in said cause, now remaining in this office.

In testimony whereof, I hereunto set my hand, and affix the seal of said court, the day and year above written.

Attest: MARSHALL MILLER, *Clerk.*

STATE OF VERMONT, *Windham, ss:*

Pleas and actions heard and tried by the supreme court of judicature, begun and holden at New Fane, within and for the county of Windham, on the third Tuesday next after the fourth Tuesday of January, being the thirteenth day of February, in the year of our Lord one thousand eight hundred and forty-four.

Present: Hon. Isaac F. Redfield, Hon. Milo L. Bennett, and Hon. William Hibbard, esquires, judges.

The WEST RIVER BRIDGE Co., complainants & ap'ts,
vs.
The towns of BRATTLEBORO' & DUMMERSTON, JOSEPH DIX, ASA BOYDEN, and PHINEHAS UNDERWOOD, defendants and appellees.

This cause comes before the court by appeal from a decree of the chancellor, made at a court of chancery, begun and holden at New Fane, within and for the county of Windham, on the third Tuesday of November, A. D. 1843, by which decree the complainants' bill of complaint was, upon demurrer of defendants, decreed to be insufficient, and the said bill of complaint was by the chancellor dismissed, with costs to defendants, as by the said bill, demurrer, and records of the said court of chancery. The complainants and appellants appear by J. D. Bradley, their attorney. The defendants and appellees appear by A. Keyes & Daniel Kellogg, their attorneys.

And now, after having heard the said parties by their attorneys, it is considered by the court here, that the decree of the chancellor be affirmed, and that the proceedings in this cause, together with the judgment of this court, and all things concerning the same, be remitted to the said court of chancery that the same may be carried into effect.

STATE OF VERMONT, *county of Windham:*

I, Charles K. Williams, chief justice of the supreme court of ju-

dicature for the State of Vermont, do certify that Marshall Miller, esq., whose signature is affixed to the papers hereunto annexed, is the clerk of the said supreme court of judicature for the county of Windham, and hath the keeping of the files, records, and proceedings of said court, and of all former supreme courts of judicature holden within and for said county, and is by law the proper person to make out and certify copies thereof. And that full faith and credit are, and ought to be, given to his acts and attestations done as aforesaid, and that his attestation to the papers hereunto annexed is in due form.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said court to be hereunto affixed this fourth [SEAL.] day of June, in the year of our Lord one thousand eight hundred and forty-four.

CH. K. WILLIAMS.

UNITED STATES, *ss:*

The President of the United States to the judges of the supreme court of judicature of the State of Vermont, begun and holden at New Fane, within and for the county of Windham, in said State of Vermont, on the third Tuesday next after the fourth Tuesday of January, being the thirteenth day of February, in the year of our Lord eighteen hundred and forty-four, and the chancellor of the first judicial circuit of the said State of Vermont, sitting in chancery, (at a court begun and holden) at said New Fane, on the twenty-ninth day of May in the year last aforesaid, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between [SEAL.] the West River Bridge Company, a corporation established by the law of said State, plaintiff, and the town of Brattleborough and the town of Dummerston, both in said county of Windham, and Joseph Dix, Asa Boyden, and Phineas Underwood, all of said Dummerston, defendants, in a plea of equity heard in said supreme court of judicature, on appeal from a former decree of said chancellor, in a certain suit in equity between the same parties, concerning the petition of said Joseph Dix and others, to the county court of said county of Windham, for the laying and establishing of a certain highway within the limits of said towns of Brattleborough and Dummerston, and in the making and entering of the final judgment of the said supreme court of judicature, in the court of the said chancellor, the same being the highest court of said State in which a decision in said suit could be had, and wherein was drawn in question the validity of a certain statute of said State, and of an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and wherein the decision was in favor of such their validity, manifest error has intervened, to the great damage of the said West River Bridge Company, as has been stated, and as it is just and

proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday of January next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon, what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, Chief Justice of the said Supreme Court, at Washington aforesaid, this 24th day of May, in the year of our Lord one thousand eight hundred and forty-four, and of the independence of the United States the sixty-eighth.

EDW'D H. PRENTISS,
Clerk of the circuit court of the United States,
for the Vermont district.

Allowed by Ch. K. Williams, chief justice supreme court of Vermont.

UNITED STATES OF AMERICA, *Vermont district, ss:*

To the town of Brattleborough and the town of Dummerston, both in the county of Windham, in said State and district of Vermont, and Joseph Dix, Asa Boyden, and Phineas Underwood, all of said Dummerston, in the district aforesaid, greeting:

Whereas, there has been issued from the Supreme Court of the United States, a writ of error, bearing date the twenty-fourth day of May, A. D. 1844, directed to the judges of the supreme court of judicature of the State of Vermont, and the chancellor of the first judicial circuit of said State, wherein it is suggested, that in the record and process, and also in the rendering of judgment in a suit between the West River Bridge Company, a corporation established by law in the said State and district of Vermont, as plaintiff, and you as defendants, in a plea of equity heard in said supreme court of judicature of said State of Vermont, on appeal from a former decree of said chancellor, in a certain suit in equity therein mentioned, between the same parties, and on the making and entering of the final judgment of the said supreme court of judicature of said State, in the court of said chancellor, manifest error has intervened, to the great damage of the said party plaintiff; and the said judges and chancellor are, by the said writ, commanded, if judgment thereof be given, that under their seals, distinctly and openly, they send the record and process, in the suit aforesaid, with all things concerning them, together with the said writ, so that they have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday of January, A. D. 1845, at Washington, being the present seat of the